

<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

became aware of his hearing loss on April 16, 2015 and realized it was causally related to his employment on the same day. Appellant did not stop work and continued to be exposed to noise.

By letter dated June 16, 2015, OWCP advised appellant of the type of evidence needed to establish his claim. In a letter of the same date, it requested that the employing establishment address the sources of appellant's noise exposure, decibel and frequency level, period of exposure, and hearing protection provided.

In a June 4, 2015 statement, appellant indicated that he had no history of previous hearing loss. He noted noise exposure from hunting, cutting wood and mowing the lawn. Appellant reported still being exposed to hazardous noise. He noted that during the annual physical examination in December 2014 he failed the hearing test three times. On April 16, 2015 appellant received notification from the employing establishment hearing conservation program of a significant threshold shift in his hearing. He was informed that hearing tests revealed deterioration in his hearing since the last reference audiogram. Appellant was advised to use hearing protection around both recreational and work-related hazardous noise.

A statement of accepted facts (SOAF) noted that appellant's nonfederal employment was from 1976 to 1994 where he was exposed to minimal noise. From July 1976 to August 1980 appellant worked as a boiler technician; from April 1981 to September 1981 he worked as a groundskeeper; from October 1981 to July 1982 he worked as a laborer; from August 1982 to June 1983 he worked as a laboratory technician; and from September 1983 to May 1994 he worked as a boiler plant operator and was subject to noise associated with electric and pneumatic tools for approximately 40 hours per week. He wore ear protection in all positions. Appellant was employed by the Federal Government from August 1994 to May 2005 as a food service worker, where he was subject to minimal noise, and later as a maintenance worker, where he was exposed to noise from hand tools for about three hours a week. Ear protection was worn. Appellant's hobbies associated with exposure to loud noises were hunting and cutting wood.

The employing establishment submitted audiograms dated May 18, 2004 to June 30, 2015 which showed a standard threshold shift bilaterally when compared to the December 10, 2009 audiogram. It also noted that appellant participated in a hearing conservation program from May 18, 2004 to March 25, 2008. An April 20, 2015 employing establishment occupational audiology treatment note advised that, in addition to hearing loss, appellant had mildly bothersome tinnitus in both ears.

On September 25, 2015 OWCP referred appellant, together with a SOAF, to Dr. Wayne Shaia, a Board-certified otolaryngologist, for an otologic examination and an audiological evaluation. In a November 6, 2015 report, Dr. Shaia provided results on examination and referenced appellant's exposure to workplace noise. He noted that there was no prior medical history for him to review. Dr. Shaia diagnosed noise-induced sensorineural hearing loss that was in part or all, due to the noise exposure of appellant's federal civilian employment. Examination of the right pinna was normal, external auditory canal and tympanic membranes were normal, with no evidence of middle ear infection, effusion or perforation. Dr. Shaia noted basic tuning fork tests were normal with no indication of acoustic neuroma or Meniere's disease. He performed an otologic evaluation of appellant on November 6, 2015 and audiometric testing was conducted on his behalf on the same date. Testing at the frequency levels of 500, 1,000, 2,000,

and 3,000 cycles per second (cps) revealed the following: right ear 15, 15, 30, and 45 decibels; left ear 10, 10, 20, and 55 decibels. Dr. Shaia opined that amplification by hearing aids was not necessary and recommended that appellant wear ear protection when around loud machinery or loud noises. He indicated that appellant had bilateral sensorineural hearing loss which was consistent with a noise-induced hearing loss pattern. Dr. Shaia noted that the date of maximum medical improvement was November 6, 2015. He advised that pursuant to the hearing impairment calculation sheet appellant had 0 percent monaural hearing loss in the left ear and 2.5 percent monaural hearing loss in the right ear. Dr. Shaia further opined that the hearing loss was greater than what would be normally predicted on the basis of presbycusis. He noted the workplace exposure was of sufficient intensity and duration to cause the hearing loss.

On December 9, 2015 OWCP accepted appellant's claim for bilateral sensorineural hearing loss due to noise exposure.

On February 7, 2016 an OWCP medical adviser reviewed Dr. Shaia's report and the audiometric test of November 6, 2015. He reported appellant's work history and noise exposure. The medical adviser noted that the earliest audiogram available to review was from 2004 which was essentially within normal limits except for an early acoustic notch noted in the right ear at 25 decibels and in the left ear at 30 decibels suggestive of acoustic trauma. He noted the latest audiogram of November 6, 2015 showed normal hearing bilaterally up to 1,000 Hz and at this frequency the right ear dropped to an acoustic notch of 60 decibels at 4,000 Hz and in the left ear 55 decibels. The medical adviser explained that these patterns were very consistent with acoustic trauma most probably induced by work noise. He noted appellant's hearing worsened significantly from his work start in 2004. The medical adviser concluded that, in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*,<sup>2</sup> (A.M.A., *Guides*) appellant had 1.88 percent (rounded up to two percent) monaural hearing loss in the right ear and zero percent hearing loss in the left ear with binaural hearing loss of .3 percent. He indicated that appellant's hearing was quite good in speech range and he would not be a candidate for hearing aids. The medical adviser noted that no mention was made of tinnitus so there would be none to mask by use of an aid. He recommended yearly audiograms and hearing protection in noisy environments.

In a decision dated March 17, 2016, OWCP granted appellant a schedule award for two percent permanent impairment of the right ear. The period of the award was from November 6 to 13, 2015.

On April 26, 2016 appellant requested reconsideration. He indicated that he started working for the Federal Government in 1994 and not 2004. Additionally, appellant noted advising Dr. Shaia that he had tinnitus and experienced bilateral hearing loss. He submitted audiograms dated January 1985 to March 2016.

In a decision dated May 24, 2016, OWCP denied modification of the decision dated March 17, 2016.

---

<sup>2</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

## **LEGAL PRECEDENT**

The schedule award provision of FECA<sup>3</sup> and its implementing regulations<sup>4</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.<sup>5</sup>

OWCP evaluates industrial hearing loss in accordance with the standards contained in the A.M.A., *Guides*.<sup>6</sup> Using the frequencies of 500, 1,000, 2,000, and 3,000 cps, the losses at each frequency are added up and averaged.<sup>7</sup> Then, the “fence” of 25 decibels is deducted because, as the A.M.A., *Guides* points out, losses below 25 decibels result in no impairment in the ability to hear everyday speech under everyday conditions.<sup>8</sup> The remaining amount is multiplied by a factor of 1.5 to arrive at the percentage of monaural hearing loss.<sup>9</sup> The binaural loss is determined by calculating the loss in each ear using the formula for monaural loss; the lesser loss is multiplied by five, then added to the greater loss and the total is divided by six to arrive at the amount of the binaural hearing loss.<sup>10</sup> The Board has concurred in OWCP’s adoption of this standard for evaluating hearing loss.<sup>11</sup>

Regarding tinnitus, the A.M.A., *Guides* provide that tinnitus is not a disease but rather a symptom that may be the result of disease or injury.<sup>12</sup> The A.M.A., *Guides* state that if tinnitus interferes with activities of daily living, including sleep, reading (and other tasks requiring concentration), enjoyment of quiet recreation, and emotional well-being, up to five percent may be added to a measurable binaural hearing impairment.<sup>13</sup>

---

<sup>3</sup> 5 U.S.C. § 8107.

<sup>4</sup> 20 C.F.R. § 10.404 (1999).

<sup>5</sup> *Id.* See also *Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>6</sup> A.M.A., *Guides* 250 (6<sup>th</sup> ed. 2009).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Donald E. Stockstad*, 53 ECAB 301 (2002), *petition for recon. granted (modifying prior decision)*, Docket No. 01-1570 (issued August 13, 2002).

<sup>12</sup> See *supra* note 6 at 249.

<sup>13</sup> *Id.* See also *R.H.*, Docket No. 10-2139 (issued July 13, 2011); *Robert E. Cullison*, 55 ECAB 570 (2004).

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the medical adviser providing rationale for the percentage of impairment specified.<sup>14</sup> OWCP may follow the advice of its medical adviser or consultant where he or she has properly utilized the A.M.A., *Guides*.<sup>15</sup>

### ANALYSIS

OWCP accepted appellant's claim for bilateral sensorineural hearing loss. The issue is whether appellant has greater than two percent permanent impairment of the right ear for which he received a schedule award.

OWCP referred appellant to Dr. Shaia, a Board-certified otolaryngologist, for a second opinion evaluation on November 6, 2015. Dr. Shaia diagnosed noise-induced sensorineural hearing loss that was due to the noise exposure of appellant's federal civilian employment. He opined that amplification by hearing aids was not necessary and recommended that appellant wear ear protection at all times when around loud machinery or loud noises. Dr. Shaia noted that the date of maximum medical improvement was November 6, 2015. He noted that pursuant to the hearing impairment calculation sheet appellant had zero percent monaural hearing loss in the left ear and 2.5 percent monaural hearing loss in the right ear.

OWCP referred the medical evidence to OWCP's medical adviser, for a rating of permanent impairment in accordance with the A.M.A., *Guides*.<sup>16</sup> The medical adviser opined that appellant had 1.88 percent (rounded up to two percent) monaural hearing loss in the right ear and zero percent hearing loss in the left ear with binaural hearing loss of .3 percent (rounded down to zero) based on the results of the November 6, 2015 audiogram and Dr. Shaia's second opinion report. He indicated that appellant would not be a candidate for hearing aids. The medical adviser noted that no mention was made of tinnitus so there would be none to mask by use of an aid. He recommended yearly audiograms and hearing protection in noisy environments.

The Board finds that OWCP's medical adviser properly calculated appellant's hearing loss based on the findings from the audiogram performed for Dr. Shaia. Although Dr. Shaia calculated 2.5 percent monaural hearing loss for the right ear, this was incorrect. As noted, testing for the right ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed decibels losses of 15, 15, 30, and 45, respectively. These decibels were totaled at 105 and were divided by four to obtain an average hearing loss at those cycles of 26.25 decibels. The average of 26.25 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to equal 1.25 which was multiplied by the established factor of 1.5 to compute

---

<sup>14</sup> See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(f) (February 2013).

<sup>15</sup> See Ronald J. Pavlik, 33 ECAB 1596 (1982).

<sup>16</sup> See Hildred I. Lloyd, 42 ECAB 944 (1991).

a 1.875 percent monaural loss of hearing for the right ear (rounded up to two percent).<sup>17</sup> Testing for the left ear at the frequency levels of 500, 1,000, 2,000, and 3,000 cps revealed decibels losses of 10, 10, 20, and 55 respectively. These decibels were totaled at 95 and were divided by four to obtain the average hearing loss at those cycles of 23.75 decibels. The average of 23.75 decibels was then reduced by 25 decibels (the first 25 decibels were discounted as discussed above) to zero which was multiplied by the established factor of 1.5 to compute a zero percent hearing loss for the left ear. To determine binaural hearing loss the lesser loss of zero is multiplied by 5, then added to the greater loss of 1.875 and the total is divided by 6 to arrive at the amount of the binaural hearing loss of .3 percent (rounded down to zero).<sup>18</sup>

The A.M.A., *Guides* allows for compensation of up to five percent for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.<sup>19</sup> In this case, Dr. Shaia did not reference tinnitus and did not provide a detailed description of appellant's symptoms pertaining to tinnitus and how the condition interfered with his activities of daily living. Therefore additional impairment for tinnitus is not warranted.<sup>20</sup>

Appellant may request an increased schedule award, at any time, based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

### **CONCLUSION**

The Board finds that appellant had no more than two percent monaural hearing loss in the right ear for which he received a schedule award.

---

<sup>17</sup> The policy of OWCP is to round the calculated percentage of impairment to the nearest whole point. Results should be rounded down for figures less than .5 and up for .5 and over. *See supra* note 14 at Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.3.b (January 2010); *Carolyn E. Sellers*, 50 ECAB 393, 394 (1999).

<sup>18</sup> *Id.*

<sup>19</sup> *See R.H.*, *supra* note 13; *Robert E. Cullison*, *supra* note 13.

<sup>20</sup> *Supra* note 12 and 13.

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated May 24, 2016 is affirmed.

Issued: March 15, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board